

Exhibit E
Additional Provisions

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Program Terms and Conditions

1. Governing Law

In addition to Exhibit C, provision 14. Governing Law, Contractor also agrees to the following:

If it is necessary to interpret this Contract, all applicable laws may be used as aids in interpreting the Contract. However, the parties agree that any such applicable laws shall not be interpreted to create contractual obligations upon DHS or Contractor, unless such applicable laws are expressly incorporated into this Contract in some section other than this provision, Governing Law. Except for provision 16. Sanctions, and provision 17. Liquidated Damages Provision, the parties agree that any remedies for DHS' or Contractor's non-compliance with laws not expressly incorporated into this Contract, or any covenants implied to be part of this Contract, shall not include money damages, but may include equitable remedies such as injunctive relief or specific performance. This Contract is the product of mutual negotiation, and if any ambiguities should arise in the interpretation of this Contract, both parties shall be deemed authors of this Contract.

Any provision of this Contract which is in conflict with current or future applicable Federal or State laws or regulations is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the Contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

Such amendment shall constitute grounds for termination of this Contract in accordance with the procedures and provisions of provision 14, paragraph C. Termination - Contractor. The parties shall be bound by the terms of the amendment until the effective date of the termination.

The final Balanced Budget Act of 1997 regulations are published in the Federal Register/ Volume 67, Number 115/ June 14, 2002, at 42 Code of Federal Regulations, Parts 400, 430, 431, 434, 435, 438, 440 and 447. Contractor shall be in compliance with the final Balance Budget Act of 1997 regulations by August 13, 2003.

All existing Policy Letters issued by MMCD are incorporated by reference into this contract. All Policy Letters issued by MMCD subsequent to the effective date of this Contract shall be within the scope of this Contract. Contractor shall comply with all existing MMCD Policy Letters.

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2. Entire Agreement

This written Contract and any amendments shall constitute the entire agreement between the parties. No oral representations shall be binding on either party unless such representations are reduced to writing and made an amendment to the Contract.

3. Amendment

In addition to Exhibit C, provision 2. Amendment, Contractor also agrees to the following:

Should either party, during the life of this Contract, desire a change in this Contract, that change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal within 10 days of receipt of the proposal. The party proposing any such change shall have the right to withdraw the proposal any time prior to acceptance or rejection by the other party. Any proposal shall set forth an explanation of the reason and basis for the proposed change and the text of the desired amendment to this Contract which would provide for the change. If the proposal is accepted, this Contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by DHHS, and the State Department of Finance, if necessary.

4. Change Requirements

A. General Provisions

The parties recognize that during the life of this Contract, the Medi-Cal Managed Care program will be a dynamic program requiring numerous changes to its operations and that the scope and complexity of changes will vary widely over the life of the Contract. The parties agree that the development of a system which has the capability to implement such changes in an orderly and timely manner is of considerable importance.

B. Contractor's Obligation to Implement

The Contractor will make changes mandated by DHS. In the case of mandated changes in regulations, statutes, federal guidelines, or judicial interpretation, DHS may direct the Contractor to immediately begin implementation of any change by issuing a Change Order. If DHS issues a Change Order, the Contractor will be obligated to implement the required changes while discussions relevant to any capitation rate adjustment, if applicable, are taking place.

DHS may, at any time, within the general scope of the Contract, by written notice, issue Change Orders to the Contract.

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5. Delegation Of Authority

DHS intends to implement this Contract through a single administrator, called the "Contracting Officer". The Director of DHS will appoint the Contracting Officer. The Contracting Officer, on behalf of DHS, will make all determinations and take all actions as are appropriate under this Contract, subject to the limitations of applicable Federal and State laws and regulations. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to the Contractor.

Contractor will designate a single administrator; hereafter called the "Contractor's Representative". The Contractor's Representative, on behalf of the Contractor, will make all determinations and take all actions as are appropriate to implement this Contract, subject to the limitations of the Contract, Federal and State laws and regulations. The Contractor's Representative may delegate his/her authority to act to an authorized representative through written notice to the Contracting Officer. The Contractor's Representative will be empowered to legally bind the Contractor to all agreements reached with DHS.

Contractor shall designate Contractor's Representative in writing and shall notify the Contracting Officer in accordance with Exhibit E, Attachment 2, provision 10. Notices.

6. Authority of the State

Sole authority to establish, define, or determine the reasonableness, the necessity and level and scope of covered benefits under the Medi-Cal Managed Care program administered in this Contract or coverage for such benefits, or the eligibility of the beneficiaries or providers to participate in the Medi-Cal Managed Care Program reside with DHS.

Sole authority to establish or interpret policy and its application related to the above areas will reside with DHS.

The Contractor may not make any limitations, exclusions, or changes in benefits or benefit coverage; any changes in definition or interpretation of benefits; or any changes in the administration of the Contract related to the scope of benefits, allowable coverage for those benefits, or eligibility of beneficiaries or providers to participate in the program, without the express, written direction or approval of the Contracting Officer.

7. Fulfillment of Obligations

No covenant, condition, duty, obligation, or undertaking continued or made a part of this Contract will be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any

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regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply; and, until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party will have the right to invoke any remedy available under this Contract, or under law, notwithstanding such forbearance or indulgence.

8. Obtaining DHS Approval

Contractor shall obtain written approval from DHS, as provided in Exhibit E, Attachment 3, provision 5 Approval Process, prior to commencement of operation under this Contract.

DHS reserves the right to review and approve any changes to Contractor's protocols, policies, and procedures as specified in this Contract.

9. Certifications

In addition to Exhibit C, provision 11. Certifications, Contractor also agrees to the following:

With respect to any report, invoice, record, papers, documents, books of account, or other Contract required data submitted, pursuant to the requirements of this Contract, the Contractor's Representative or his/her designee will certify, under penalty of perjury, that the report, invoice, record, papers, documents, books of account or other Contract required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by DHS in writing.

10. Notices

All notices to be given under this Contract will be in writing and will be deemed to have been given when mailed to DHS or the Contractor:

State Department of Health Services
Medi-Cal Managed Care Division
714 P Street, Room 650
P.O. Box 942732
Sacramento, CA 94234-7320
Attn: Contracting Officer

Contractor Name and Address
Attn: Contractor Representative

11. Term

The Contract will become effective _____, and will continue in full force and effect through _____ subject to the provisions of Exhibit B, provision 1. Budget Contingency Clause and Exhibit D(F), provision 9. Federal Contract

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Funds because the State has currently appropriated and available for encumbrance only funds to cover costs through June 30, _____.

The term of the Contract consists of the following three periods: 1) The Implementation Period shall extend from _____ to _____; 2) The Operations Period shall extend from _____ to _____, subject to the termination provisions of provision 14, Termination for Cause and Other Terminations, and provision 16, Sanctions, and subject to the limitation provisions of Exhibit B, provision 1, Budget Contingency Clause; and 3) The Phaseout Period shall extend for six (6) months from the end of the Operations Period, subject to provision 13. Contract Extension, in which case the Phaseout Period shall apply to the six (6) month period beginning the first day after the end of the Operations Period, as extended.

The Operations Period will commence subject to DHS acceptance of the Contractor's readiness to begin the Operations Period.

12. Service Area

The Service Area covered under this Contract includes:

All Contract provisions apply separately to each Service Area. This Contract may expire for some Service Areas and still remain in effect for others with each Service Area having its own Implementation, Operations, and Phaseout periods.

13. Contract Extension

DHS will have the exclusive option to extend the term of the Contract for any Service Area during the last twelve (12) months of the Contract, as determined by the original expiration date or by a new expiration date if an extension option has been exercised. DHS may invoke up to three (3) separate extensions of up to twelve months each. The Contractor will be given at least nine (9) months prior written notice of DHS' decision on whether or not it will exercise this option to extend the Contract for each Service Area.

Contractor will provide written notification to DHS of its intent to accept or reject the extension within five (5) State working days of the receipt of the notice from DHS.

14. Termination for Cause and Other Terminations

In addition to Exhibit C, provision 7. Termination for Cause, Contractor also agrees to the following:

A. Termination - State or Director

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DHS may terminate performance of work under this Contract in whole, or in part, whenever for any reason DHS determines that the termination is in the best interest of the State.

- 1) Notification shall be given at least six (6) months prior to the effective date of termination, except in cases described below in paragraph B. Termination for Cause.
- 2) If DHS awards a new contract for one or more of the Service Areas to another Contractor during one of the amendment periods as described above in Provision 13. Contract Extension, DHS shall provide the Contractor written notification at least six (6) months prior to termination to allow for all Phaseout Requirements to be completed.

B. Termination for Cause

- 1) DHS shall terminate this Contract pursuant to the provisions of Welfare and Institutions Code, Section 14304(a) and Title 22, CCR, Section 53873.
- 2) DHS shall terminate this Contract in the event that: (1) the Secretary, DHHS, determines that the Contractor does not meet the requirements for participation in the Medicaid program, Title XIX of the Social Security Act (42 U.S. Code § 1396), or (2) the Department of Managed Health Care finds that the Contractor no longer qualifies for licensure under the Knox-Keene Health Care Service Plan Act (Health and Safety Code § 1340 et seq.) by giving written notice to the Contractor. The termination will be effectuated consistent with the provisions of Title 22, CCR, Section 53873. Notification will be given by DHS at least sixty (60) days prior to the effective date of termination.
- 3) In cases where the Director determines the health and welfare of Members is jeopardized by continuation of the Contract, the Contract will be immediately terminated. Notification will state the effective date of, and the reason for, the termination.

Except for termination pursuant to paragraph B, item 3) above, termination of the Contract shall be effective on the last day of the month in which the Secretary, DHHS, or the DMHC makes such determination, provided that DHS provides Contractor with at least 60 days notice of termination. The termination of this Contract shall be effective on the last day of the second full month from the date of the notice of termination. Contractor agrees that 60 days notice is reasonable. Termination under this section does not relieve Contractor of its obligations under provision

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15. Phaseout Requirements shall be performed after Contract termination.

C. Termination - Contractor

If mutual agreement between DHS and Contractor cannot be attained on capitation rates for rate years subsequent to September 30, _____, Contractor shall retain the right to terminate the Contract, no earlier than September 30, _____, by giving at least nine (9) months written notice to DHS to that effect. The effective date of any termination under this section shall be September 30.

Grounds under which Contractor may terminate this Contract are limited to: (1) Unwillingness to accept the capitation rates determined by DHS, or if DHS decides to negotiate rates, failure to reach mutual agreement on rates; or (2) When a change in contractual obligations is created by a State or Federal change in the Medi-Cal program, or a lawsuit, that substantially alters the financial assumptions and conditions under which the Contractor entered into this Contract, such that the Contractor can demonstrate to the satisfaction of DHS that it cannot remain financially solvent through the term of the Contract.

If Contractor invokes ground number 2, Contractor shall submit a detailed written financial analysis to DHS supporting its conclusions that it cannot remain financially solvent. At the request of DHS, Contractor shall submit or otherwise make conveniently available to DHS, all of Contractor's financial work papers, financial reports, financial books and other records, bank statements, computer records, and any other information required by DHS to evaluate Contractor's financial analysis.

DHS and Contractor may negotiate an earlier termination date if Contractor can demonstrate to the satisfaction of DHS that it cannot remain financially solvent until the termination date that would otherwise be established under this section. Termination under these circumstances shall not relieve Contractor from performing the Phaseout Requirements described in provision 15.

D. Termination of Obligations

All obligations to provide Covered Services under this Contract or Contract extension will automatically terminate on the date the Operations Period ends.

E. Notice to Members of Transfer of Care

At least sixty (60) days prior to the termination of the Contract, DHS will notify Members about their medical benefits and available options.

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15. Phaseout Requirements

- A. DHS shall retain the lesser of an amount equal to 10% of the last month's Service Area capitation payment or one million dollars (\$1,000,000) for each Service Area unless provided otherwise by the Financial Performance Guarantee, from the capitation payment of the last month of the Operations Period for each Service Area until all activities required during the Phaseout Period for each Service Area are fully completed to the satisfaction of DHS, in its sole discretion.

If all Phaseout activities for each Service Area are completed by the end of the Phaseout Period, the withhold will be paid to the Contractor. If the Contractor fails to meet any requirement(s) by the end of the Phaseout Period for each Service Area, DHS will deduct the costs of the remaining activities from the withhold amount and continue to withhold payment until all activities are completed.

- B. The objective of the Phaseout Period is to ensure that, at the termination of this Contract, the orderly transfer of necessary data and history records is made from the Contractor to DHS or to a successor Contractor.

Ninety (90) days prior to termination or expiration of this Contract and through the Phaseout Period for each Service Area, the Contractor shall assist DHS in the transition of Members, and in ensuring, to the extent possible, continuity of Member-Provider relationships. In doing this, the Contractor will make available to DHS copies of Medical Records, patient files, and any other pertinent information, including information maintained by any subcontractor, necessary for efficient case management of Members, as determined by the Director. In no circumstances will a Medi-Cal Member be billed for this activity.

- C. Phaseout for this Contract will consist of the processing, payment and monetary reconciliation(s) necessary regarding claims for payment for Covered Services.

Phaseout for the Contract will consist of the completion of all financial and reporting obligations of the Contractor. The Contractor will remain liable for the processing and payment of invoices and other claims for payment for Covered Services and other services provided to Members pursuant to this Contract prior to the expiration or termination. The Contractor will submit to DHS all reports required in Exhibit A, Attachment 17, Reports, for the period from the last submitted report through the expiration or termination date.

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All data and information provided by the Contractor will be accompanied by letter, signed by the responsible authority, certifying, under penalty of perjury, to the accuracy and completeness of the materials supplied.

D. Phaseout Period

The Phaseout Period will commence on the date the Operations Period of the Contract or Contract extension ends. Phaseout related activities are non-payable items.

16. Sanctions

In addition to complying with sanctions and civil penalties taken pursuant to Welfare and Institutions Code Section 14304 and Title 22 of the California Code of Regulations, Section 53872, if required by DHS, Contractor shall ensure subcontractors cease specified activities which may include, but are not limited to, referrals, assignment of beneficiaries, and reporting, until DHS determines that Contractor is again in compliance.

A. In the event DHS finds Contractor non-compliant with any provisions of this Contract, applicable statutes or regulations, DHS may impose sanctions provided in Welfare and Institutions Code, Section 14304 and Title 22, CCR, Section 53872 as modified for purposes of this Contract. Title 22, CCR, Section 53872 is so modified as follows:

- 1) Subsection (b)(1) is modified by replacing "Article 2" with "Article 6"
- 2) Subsection (b)(2) is modified by replacing "Article 3" with "Article 7"

B. The requirements of Exhibit A, Attachment 4, regarding QIS are all Contract provisions which are not specifically governed by Chapter 4.1 (commencing with Section 53800) of Division 3 of Title 22, CCR. Therefore, sanctions for violations of the requirements of Exhibit A, Attachment 4, regarding QIS shall be governed by Subsection 53872 (b)(4).

C. For purposes of Sanctions, good cause includes, but is not limited to, the following:

- 1) Three repeated and uncorrected findings of serious deficiencies that have the potential to endanger patient care identified in the medical audits conducted by DHS.
- 2) In the case of Exhibit A, Attachment 4, the Contractor consistently fails to achieve the minimum performance levels, or receives a

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“Not Reported” designation on an External Accountability Set measure, after implementation of Corrective Actions.

- D. Sanctions in the form of denial of payments provided for under the contract for new enrollees shall be taken, when and for long as, payment for those enrollees is denied by Centers for Medicare and Medicaid Services (CMS) under 42 CFR § 434.67(e).

17. Liquidated Damages Provisions

A. General

It is agreed by the State and Contractor that:

1. If Contractor does not provide or perform the requirements of this Contract or applicable laws and regulations, damage to the State shall result; proving such damages shall be costly, difficult, and time-consuming; should the State choose to impose liquidated damages, Contractor shall pay the State those damages for not providing or performing the specified requirements; additional damages may occur in specified areas by prolonged periods in which Contractor does not provide or perform requirements; the damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract; DHS may, at its discretion, offset liquidated damages from capitation payments owed to Contractor.
2. Imposition of liquidated damages as specified in item B. Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period and item C. Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period, shall follow the administrative processes described below;
3. DHS shall provide Contractor with written notice specifying the Contractor requirement(s), contained in the Contract or as required by Federal and State law or regulation, not provided or performed;
4. During the Implementation Period, Contractor shall submit or complete the outstanding requirement(s) specified in the written notice within five (5) State working days from the date of the notice, unless, Contractor submits a written request approved by Contracting Officer for an extension. The request must include the following: the requirement(s) requiring an extension; the

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reason for the delay; and the proposed date of the submission of the requirement.

5. If Contractor has not completed an Implementation Period Requirement by a specified timeframe or secured an extension for the submission of the outstanding requirement, DHS may impose liquidated damages for the amount specified in paragraph B. Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period.
6. During the Operations Period, Contractor shall demonstrate the provision or performance of Contractor's requirement(s) specified in the written notice within a thirty (30) calendar day Corrective Action period from the date of the notice, unless a request for an extension is submitted to and approved by the Contracting Officer, within five (5) days from the end of the Corrective Action period. If Contractor has not demonstrated the provision or performance of Contractor's requirement(s) specified in the written notice during the Corrective Action period, nor secured an extension for performance or provision of the outstanding requirement, DHS may impose liquidated damages for the specified Contractor's requirement not performed or provided for the amount specified in paragraph C. Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period.
7. During the Operations Period, if Contractor has not performed or provided Contractor's requirement(s) specified in the written notice or secured the written approval for an extension, after thirty (30) days from the imposition of liquidated damages, DHS shall notify Contractor in writing of the adjustment of the liquidated damages to the amount specified in paragraph C. Liquidated Damages for Violation of Contract Terms or Regulations Regarding the Operations Period.

Nothing in this provision shall be construed as relieving Contractor from performing any other Contract duty not listed herein, nor is the State's right to enforce or to seek other remedies for failure to perform any other Contract duty hereby diminished.

B. Liquidated Damages for Violation of Contract Terms Regarding the Implementation Period

DHS may impose liquidated damages of \$10,000 per day as specified in the written notice for each day of the delay in completion or submission of implementation period requirements beyond the Implementation Period (six (6) months from the start of the Contract).

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If DHS determines that a delay or other non-performance was caused in part by the State, DHS will reduce the liquidated damages proportionately.

C. Liquidated Damages for Violation of Contract Terms or Regulations during the Operations Period.

1. Site Reviews

DHS may impose liquidated damages of \$10,000 per day for each violation of contract requirement not performed in accordance with Exhibit A, Attachment 4 – Quality Improvement System, provision 10. Site Review, item D. Corrective Actions. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$5,000 per day per Contract requirement, until the Contract requirement is performed or provided.

2. Provider Compensation Arrangements

DHS may impose liquidated damages of \$5,000 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment 8, Provider Compensation Arrangements, provision 5. Claims Processing, item. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$2,500 per day per Contract requirement, until the Contract requirement is performed or provided.

3. Access Requirements

DHS may impose liquidated damages of \$5,000 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment 9, Access and Availability, provision 3. Access Requirements, items A. through H. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$2,500 per day per Contract requirement, until the Contract requirement is performed or provided.

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4. Linguistic Services

DHS may impose liquidated damages of \$5,000 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment 9, Access and Availability, provision 13, Linguistic Services, items A, B, and C. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$2,500 per day per Contract requirement, until the Contract requirement is performed or provided.

5. Third-Party Tort Liability

DHS may impose liquidated damages of \$3,500 per instance or case, per Medi-Cal Member if a Contractor fails to deliver the requested information in accordance with Exhibit E, Attachment 2, provision 24 Third-Party Tort Liability. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$3,500 per day, per instance or case, per Medi-Cal Member, until the Contract requirement is performed or provided.

6. Plan Physician Availability

DHS may impose liquidated damages of \$10,000 per violation of Contract requirement not performed in accordance with Exhibit A, Attachment 6, Provider Network, provision 9, Plan Physician Availability. If after thirty (30) days, the Contractor has not demonstrated the provision or performance of the Contractor's requirement(s) specified in the written notice, DHS may issue a written notice that the liquidated damages will be adjusted to \$5,000 per day per Contract requirement, until the Contract requirement is performed or provided.

If DHS determines that delay of the Contractor requirement was caused in part by the State, DHS will reduce the liquidated damages proportionately.

D. Conditions for Termination of Liquidated Damages

Except as waived by the Contracting Officer, no liquidated damages imposed on the Contractor will be terminated or suspended until the Contractor issues a written notice of correction to the Contracting Officer certifying, under penalty of perjury, the correction of condition(s) for which liquidated damages were imposed. Liquidated damages will cease on the

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day of the Contractor's certification only if subsequent verification of the correction by DHS establishes that the correction has been made in the manner and at the time certified to by the Contractor.

The Contracting Officer will determine whether the necessary level of documentation has been submitted to verify corrections. The Contracting Officer will be the sole judge of the sufficiency and accuracy of any documentation. Corrections must be sustained for a reasonable period of at least ninety (90) days from DHS acceptance; otherwise, liquidated damages may be reimposed without a succeeding grace period within which to correct. The Contractor's use of resources to correct deficiencies will not be allowed to cause other contract compliance problems.

E. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions is determined to be unenforceable, the other portions will remain in full force and effect.

18. Disputes

In addition to Exhibit C, provision 6. Disputes, Contractor also agrees to the following:

This Disputes section will be used by the Contractor as the means of seeking resolution of disputes on contractual issues.

Filing a dispute will not preclude DHS from recouping the value of the amount in dispute from the Contractor or from offsetting this amount from subsequent capitation payment(s). If the amount to be recouped exceeds 25 percent of the capitation payment, amounts of up to 25 percent will be withheld from successive capitation payments until the amount in dispute is fully recouped.

A. Disputes Resolution by Negotiation

DHS and Contractor agree to try to resolve all contractual issues by negotiation and mutual agreement at the Contracting Officer level without litigation. The parties recognize that the implementation of this policy depends on open-mindedness, and the need for both sides to present adequate supporting information on matters in question.

B. Notification of Dispute

Within fifteen (15) days of the date the dispute concerning performance of this Contract arises or otherwise becomes known to the Contractor, the Contractor will notify the Contracting Officer in writing of the dispute,

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describing the conduct (including actions, inactions, and written or oral communications) which it is disputing.

The Contractor's notification will state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) That it is a dispute pursuant to this section.
- 2) The date, nature, and circumstances of the conduct which is subject of the dispute.
- 3) The names, phone numbers, function, and activity of each Contractor, Subcontractor, DHS/State official or employee involved in or knowledgeable about the conduct.
- 4) The identification of any documents and the substances of any oral communications involved in the conduct. Copies of all identified documents will be attached.
- 5) The reason the Contractor is disputing the conduct.
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any.
- 7) The Contractor's desired remedy.

The required documentation, including cost impact data, will be carefully prepared and submitted with substantiating documentation by the Contractor. This documentation will serve as the basis for any subsequent appeal.

Following submission of the required notification, with supporting documentation, the Contractor will comply with the requirements of Title 22, CCR, Section 53851(d) and diligently continue performance of this Contract, including matters identified in the Notification of Dispute, to the maximum extent possible.

C. Contracting Officer's or Alternate Dispute Officer's Decision

Pursuant to a request by Contractor, the Contracting Officer may provide for a dispute to be decided by an alternate dispute officer designated by DHS, who is not the Contracting Officer and is not directly involved in the Medi-Cal Managed Care Program. Any disputes concerning performance of this Contract shall be decided by the Contracting Officer or the alternate dispute officer in a written decision stating the factual basis for the decision. Within thirty (30) days of receipt of a Notification of Dispute, the Contracting Officer or the alternate dispute officer, shall either:

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- 1) Find in favor of Contractor, in which case the Contracting Officer or alternate dispute officer may:
 - a. Countermand the earlier conduct which caused Contractor to file a dispute; or
 - b. Reaffirm the conduct and, if there is a cost impact sufficient to constitute a change in obligations pursuant to the payment provisions contained in Exhibit B, direct DHS to comply with that Exhibit.Or,
- 2) Deny Contractor's dispute and, where necessary, direct the manner of future performance; or
- 3) Request additional substantiating documentation in the event the information in Contractor's notification is inadequate to permit a decision to be made under 1) or 2) above, and shall advise Contractor as to what additional information is required, and establish how that information shall be furnished. Contractor shall have thirty (30) days to respond to the Contracting Officer's or alternate dispute officer's request for further information. Upon receipt of this additional requested information, the Contracting Officer or alternate dispute officer shall have thirty (30) days to respond with a decision. Failure to supply additional information required by the Contracting Officer or alternate dispute officer within the time period specified above shall constitute waiver by Contractor of all claims in accordance with item F. Waiver of Claims.

A copy of the decision shall be served on Contractor.

D. Appeal of Contracting Officer's or Alternate Dispute Officer's Decision

Contractor shall have thirty (30) calendar days following the receipt of the decision to file an appeal of the decision to the Director. All appeals shall be governed by Health and Safety Code Section 100171, except for those provisions of Section 100171(d)(1) relating to accusations, statements of issues, statement to respondent, and notice of defense. All appeals shall be in writing and shall be filed with DHS' Office of Administrative Hearings and Appeals. An appeal shall be deemed filed on the date it is received by the Office of Administrative Hearings and Appeals. An appeal shall specifically set forth each issue in dispute, and include Contractor's contentions as to those issues. However, Contractor's appeal shall be limited to those issues raised in its Notification of Dispute filed pursuant to paragraph B. Notification of Dispute. Failure to timely appeal the decision

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shall constitute a waiver by Contractor of all claims arising out of that conduct, in accordance with paragraph F. Waiver of Claims. Contractor shall exhaust all procedures provided for in this provision 18. Disputes, prior to initiating any other action to enforce this Contract.

E. Contractor Duty to Perform

Pending final determination of any dispute hereunder, Contractor shall comply with the requirements of Title 22, CCR, Section 53851 (d) and proceed diligently with the performance of this Contract and in accordance with the Contracting Officer's or alternate dispute officer's decision.

If pursuant to an appeal under paragraph D. Appeal of Contracting Officer's or Alternate Dispute Officer's Decision, the Contracting Officer's or alternate dispute officer's decision is reversed, the effect of the decision pursuant to paragraph D. shall be retroactive to the date of the Contracting Officer's or alternate dispute officer's decision, and Contractor shall promptly receive any benefits of such decision. DHS shall not pay interest on any amounts paid pursuant to a Contracting Officer's or alternate dispute officer's decision or any appeal of such decision.

F. Waiver of Claims

If Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, any additionally required information, or an appeal of the Contracting Officer's or alternate dispute officer's decision, in the manner and within the time specified in this provision 18. Disputes, that failure shall constitute a waiver by Contractor of all claims arising out of that conduct, whether direct or consequential in nature.

19. Audit

In addition to Exhibit C, provision 4. Audit, Contractor also agrees to the following:

The Contractor will maintain such books and records necessary to disclose how the Contractor discharged its obligations under this Contract. These books and records will disclose the quantity of Covered Services provided under this contract, the quality of those services, the manner and amount of payment made for those services, the persons eligible to receive Covered Services, the manner in which the Contractor administered its daily business, and the cost thereof.

A. Books and Records

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These books and records will include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract including working papers; reports submitted to DHS; financial records; all Medical Records, medical charts and prescription files; and other documentation pertaining to medical and non-medical services rendered to Members.

B. Records Retention

These books and records will be maintained for a minimum of five years from the end of the Fiscal Year in which the Contract expires or is terminated, or, in the event the Contractor has been duly notified that DHS, DHHS, DOJ, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the Contract, until such time as the matter under audit or investigation has been resolved, whichever is later.

20. Inspection Rights

In addition to Exhibit D (F), provision 8. Site Inspection, Contractor also agrees to the following:

Through the end of the records retention period specified in provision 19. Audit, paragraph B. Records Retention, Contractor shall allow the DHS, Department of Health and Human Services, the Comptroller General of the United States, Department of Justice (DOJ) Bureau of Medi-Cal Fraud, DMHC, and other authorized State agencies, or their duly authorized representatives, including DHS' external quality review organization contractor, to inspect, monitor or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract, and to inspect, evaluate, and audit any and all books, records, and Facilities maintained by Contractor and subcontractors pertaining to these services at any time during normal business hours.

Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Contract, including working papers, reports, financial records, and books of account, Medical Records, prescription files, laboratory results, Subcontracts, information systems and procedures, and any other documentation pertaining to medical and non-medical services rendered to Members. Upon request, through the end of the records retention period specified in provision 19, Audit, paragraph B. Records Retention, Contractor shall furnish any record, or copy of it, to DHS or any other entity listed in this section, at Contractor's sole expense.

A. Facility Inspections

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DHS shall conduct unannounced validation reviews on a number of the Contractor's Primary Care sites, selected at DHS' discretion, to verify compliance of these sites with DHS requirements.

B. Access Requirements and State's Right To Monitor

Authorized State and Federal agencies will have the right to monitor all aspects of the Contractor's operation for compliance with the provisions of this Contract and applicable federal and State laws and regulations. Such monitoring activities will include, but are not limited to, inspection and auditing of Contractor, subcontractor, and provider facilities, management systems and procedures, and books and records as the Director deems appropriate, at any time during the Contractor's or other facility's normal business hours. The monitoring activities will be either announced or unannounced.

To assure compliance with the Contract and for any other reasonable purpose, the State and its authorized representatives and designees will have the right to premises access, with or without notice to the Contractor. This will include the MIS operations site or such other place where duties under the Contract are being performed.

Staff designated by authorized State agencies will have access to all security areas and the Contractor will provide, and will require any and all of its subcontractors to provide, reasonable facilities, cooperation and assistance to State representative(s) in the performance of their duties. Access will be undertaken in such a manner as to not unduly delay the work of the Contractor and/or the subcontractor(s).

21. Confidentiality of Information

In addition to Exhibit D (F), provision 13. Confidentiality of Information, Contractor also agrees to the following duties and responsibilities with respect to confidentiality of information and data:

- A. Notwithstanding any other provision of this Contract, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 42, CFR, Section 431.300 et seq., Section 14100.2, W&I Code, and regulations adopted thereunder. For the purpose of this Contract, all information, records, data, and data elements collected and maintained for the operation of the Contract and pertaining to Members shall be protected by the Contractor from unauthorized disclosure.

Contractor may release Medical Records in accordance with applicable law pertaining to the release of this type of information. Contractor is not

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required to report requests for Medical Records made in accordance with applicable law.

- B. With respect to any identifiable information concerning a Member under this Contract that is obtained by the Contractor or its subcontractors, the Contractor: (1) will not use any such information for any purpose other than carrying out the express terms of this Contract, (2) will promptly transmit to DHS all requests for disclosure of such information, except requests for Medical Records in accordance with applicable law, (3) will not disclose except as otherwise specifically permitted by this Contract, any such information to any party other than DHS without DHS' prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 et seq., Section 14100.2, W&I Code, and regulations adopted thereunder, and (4) will, at the termination of this Contract, return all such information to DHS or maintain such information according to written procedures sent to the Contractor by DHS for this purpose.

22. Pilot Projects

DHS may establish pilot projects to test alternative managed care models tailored to suit the needs of populations with special health care needs. The operation of these pilot projects may result in the disenrollment of Members that participate. Implementation of a pilot project may affect the Contractor's obligations under this Contract. Any changes in the obligations of the Contractor that are necessary for the operation of a pilot project in the Contractor's Service Area will be implemented through a Contract amendment.

23. Cost Avoidance and Post-Payment Recovery of Other Health Coverage Sources (OHCS)

- A. Contractor shall Cost Avoid or make a Post-Payment Recovery for the reasonable value of services paid for by Contractor and rendered to a Member whenever a Member's OHCS covers the same services, either fully or partially. However, in no event shall Contractor Cost Avoid or seek Post-Payment Recovery for the reasonable value of services from a Third-Party Tort Liability (TPTL) action or make a claim against the estates of deceased Members.
- B. Contractor retains all monies recovered by Contractor.
- C. Contractor shall coordinate benefits with other coverage programs or entitlements, recognizing the OHCS as primary and the Medi-Cal program as the payor of last resort.
- D. Cost Avoidance

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- 1) If Contractor reimburses the provider on a fee-for-service basis, Contractor shall not pay claims for services provided to a Member whose Medi-Cal eligibility record indicates third party coverage, designated by a Other Health Coverage (OHC) code or Medicare coverage, without proof that the provider has first exhausted all sources of other payments. Contractor shall have written procedures implementing this requirement.
- 2) Proof of third party billing is not required prior to payment for services provided to Members with OHC codes A, M, X, Y, or Z.

E. Post-Payment Recovery

- 1) If Contractor reimburses the provider on a fee-for-service basis, Contractor shall pay the provider's claim and then seek to recover the cost of the claim by billing the liable third parties:
 - a. For services provided to Members with OHC codes A, M, X, Y, or Z;
 - b. For services defined by DHS as prenatal or preventive pediatric services; or
 - c. In child-support enforcement cases, identifiable by Contractor. If Contractor does not have access to sufficient information to determine whether or not the OHC coverage is the result of a child enforcement case, Contractor shall follow the procedures for Cost Avoidance.
- 2) In instances where Contractor does not reimburse the provider on a fee-for-service basis, Contractor shall pay for services provided to a Member whose eligibility record indicates third party coverage, designated by a OHC code or Medicare coverage, and then shall bill the liable third parties for the cost of actual services rendered.
- 3) Contractor shall also bill the liable third parties for the cost of services provided to Members who are retroactively identified by Contractor or DHS as having OHC.
- 4) Contractor shall have written procedures implementing the above requirements.

F. Reporting Requirements

- 1) Contractor shall submit monthly reports to DHS, in a format prescribed by DHS, displaying claims counts and dollar amounts

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of costs avoided and the amount of Post-Payment Recoveries, by aid category, as well as the amount of outstanding recovery claims (accounts receivable) by age of account. The report shall display separate claim counts and dollar amounts for Medicare Part A and Part B. Reports shall be sent to the Department of Health Services, Third Party Liability Branch, Cost Avoidance Unit, P.O. Box 2471, Sacramento, CA 95812-2471.

- 2) When Contractor identifies OHC unknown to DHS, Contractor shall report this information to DHS within ten (10) days of discovery in automated format as prescribed by DHS. This information shall be sent to the Department of Health Services, Third Party Liability Branch, Health Identification Unit, P.O. Box 2471, Sacramento, CA 95812-2471.
- 3) Contractor shall demonstrate to DHS that where Contractor does not Cost Avoid or perform Post-Payment Recovery that the aggregate cost of this activity exceeds the total revenues Contractor projects it would receive from such activity.

24. Third-Party Tort Liability

Contractor shall identify and notify DHS' Third Party Liability Branch of all instances or cases in which Contractor believes an action by the Medi-Cal Member involving casualty insurance or tort or Workers' Compensation liability of a third party could result in recovery by the Member of funds to which DHS has lien rights under Article 3.5 (commencing with Section 14124.70), Part 3, Division 9, Welfare and Institutions Code. Contractor shall make no claim for recovery of the value of Covered Services rendered to a Member in such cases or instances and such case or instance shall be referred to DHS' Third Party Liability Branch within ten (10) days of discovery. To assist DHS in exercising its responsibility for such recoveries, Contractor shall meet the following requirements:

- A. If DHS requests service information and/or copies of paid invoices/claims for Covered Services to an individual Member, Contractor shall deliver the requested information within thirty (30) days of the request. Service information includes subcontractor and out-of-plan provider data. The value of the Covered Services shall be calculated as the usual, customary and reasonable charge made to the general public for similar services or the amount paid to subcontracted providers or out-of-plan providers for similar services.
- B. Information to be delivered shall contain the following data items:
 - 1) Member name.
 - 2) Full 14 digit Medi-Cal number.

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- 3) Social Security Number.
 - 4) Date of birth.
 - 5) Contractor name.
 - 6) Provider name (if different from Contractor).
 - 7) Dates of service.
 - 8) Diagnosis code and description of illness/injury.
 - 9) Procedure code and/or description of services rendered.
 - 10) Amount billed by a subcontractor or out-of-plan provider to Contractor (if applicable).
 - 11) Amount paid by other health insurance to Contractor or subcontractor (if applicable).
 - 12) Amounts and dates of claims paid by Contractor to subcontractor or out-of-plan provider (if applicable).
 - 13) Date of denial and reasons for denial of claims (if applicable).
 - 14) Date of death (if applicable).
- C. Contractor shall identify to DHS' Third Party Liability Branch the name, address and telephone number of the person responsible for receiving and complying with requests for mandatory and/or optional at-risk service information.
- D. If Contractor receives any requests from attorneys, insurers, or beneficiaries for copies of bills, Contractor shall refer the request to Third Party Liability Branch with the information contained in paragraph B above, and shall provide the name, address and telephone number of the requesting party.
- E. Information submitted to DHS under this section shall be sent to Department of Health Services, Third Party Liability Branch, Recovery Section, P.O. Box 2471, Sacramento, CA 95812-2471.

25. Records Related To Recovery For Litigation

- A. Records

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Upon request by DHS, Contractor shall timely gather, preserve and provide to DHS, in the form and manner specified by DHS, any information specified by DHS, subject to any lawful privileges, in Contractor's or its subcontractors' possession, relating to threatened or pending litigation by or against DHS. (If Contractor asserts that any requested documents are covered by a privilege, Contractor shall: 1) identify such privileged documents with sufficient particularity to reasonably identify the document while retaining the privilege; and 2) state the privilege being claimed that supports withholding production of the document.) Such request shall include, but is not limited to, a response to a request for documents submitted by any party in any litigation by or against DHS. Contractor acknowledges that time may be of the essence in responding to such request. Contractor shall use all reasonable efforts to immediately notify DHS of any subpoenas, document production requests, or requests for records, received by Contractor or its Subcontractors related to this Contract or subcontracts entered into under this Contract.

B. Payment for Records

In addition to the payments provided for in Exhibit B. Payment Provisions, DHS agrees to pay Contractor for complying with paragraph A, Records, above, as follows:

- 1) DHS shall reimburse Contractor amounts paid by Contractor to third parties for services necessary to comply with paragraph A. Any third party assisting Contractor with compliance with paragraph A above, shall comply with all applicable confidentiality requirements. Amounts paid by Contractor to any third party for assisting Contractor in complying with paragraph A, shall not exceed normal and customary charges for similar services and such charges and supporting documentation shall be subject to review by DHS.
- 2) If Contractor uses existing personnel and resources to comply with paragraph A, DHS shall reimburse Contractor as specified below. Contractor shall maintain and provide to DHS time reports supporting the time spent by each employee as a condition of reimbursement. Reimbursement claims and supporting documentation shall be subject to review by DHS.
 - a. Compensation and payroll taxes and benefits, on a prorated basis, for the employees' time devoted directly to compiling information pursuant to paragraph A.

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- b. Costs for copies of all documentation submitted to DHS pursuant to paragraph A, subject to a maximum reimbursement of ten (10) cents per copied page.
- 3) Contractor shall submit to DHS all information needed by DHS to determine reimbursement to Contractor under this provision, including, but not limited to, copies of invoices from third parties and payroll records.

26. Fraud and Abuse Reporting

Contractor shall report to the Contracting Officer all cases of suspected fraud and/or abuse, as defined in 42 Code of Federal Regulations, Section 455.2, where there is reason to believe that an incident of fraud and/or abuse has occurred, by subcontractors, Members, providers, or employees within ten (10) State working days of the date when Contractor first becomes aware of or is on notice of such activity. Contractor shall establish policies and procedures for identifying, investigating and taking appropriate corrective action against fraud and/or abuse in the provision of health care services under the Medi-Cal program. Contractor shall notify DHS prior to conducting any investigations, based upon Contractor's finding that there is reason to believe that an incident of fraud and/or abuse has occurred, and, upon the request of DHS, consult with DHS prior to conducting such investigations. Without waiving any privileges of Contractor, Contractor shall report investigation results within ten (10) State working days of conclusion of any fraud and/or abuse investigation.

27. Equal Opportunity Employer

Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that it is an equal opportunity employer, and will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by DHS, advising the labor union or workers' representative of the Contractor's commitment as an equal opportunity employer and will post copies of the notice in conspicuous places available to employees and applicants for employment.

28. Discrimination Prohibitions

A. Member Discrimination Prohibition

Contractor shall not discriminate against Members or Eligible Beneficiaries because of race, color, creed, religion, ancestry, marital status, sexual orientation, national origin, age, sex, or physical or mental handicap in accordance with Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, rules and regulations promulgated pursuant thereto, or as otherwise provided by law or regulations. For the purpose of this

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Contract, discriminations on the grounds of race, color, creed, religion, ancestry, age, sex, national origin, marital status, sexual orientation, or physical or mental handicap include, but are not limited to, the following:

- 1) Denying any Member any Covered Services or availability of a Facility;
- 2) Providing to a Member any Covered Service which is different, or is provided in a different manner or at a different time from that provided to other Members under this Contract except where medically indicated;
- 3) Subjecting a Member to segregation or separate treatment in any manner related to the receipt of any Covered Service;
- 4) Restricting a Member in anyway in the enjoyment of any advantage or privilege enjoyed by others receiving any Covered Service, treating a Member or Eligible Beneficiary differently from others in determining whether he or she satisfies any admission, Enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any Covered Service;
- 5) The assignment of times or places for the provision of services on the basis of the race, color, creed, religion, age, sex, national origin, ancestry, marital status, sexual orientation, or the physical or mental handicap of the participants to be served.

Contractor shall take affirmative action to ensure that Members are provided Covered Services without regard to race, color, creed, religion, sex, national origin, ancestry, marital status, sexual orientation, or physical or mental handicap, except where medically indicated.

For the purposes of this section, physical handicap includes the carrying of a gene which may, under some circumstances, be associated with disability in that person's offspring, but which causes no adverse effects on the carrier. Such genes will include, but are not limited to, Tay-Sachs trait, sickle cell trait, thalassemia trait, and X-linked hemophilia.

B. Discrimination Related To Health Status

Contractor shall not discriminate among eligible individuals on the basis of their health status requirements or requirements for health care services during enrollment, re-enrollment or disenrollment. Contractor will not terminate the enrollment of an eligible individual based on an adverse change in the Member's health.

C. Discrimination Complaints

Contractor agrees that copies of all Grievances alleging discrimination against Members or Eligible Beneficiaries because of race, color, creed,

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sex, religion, age, national origin, ancestry, marital status, sexual orientation, or physical or mental handicap will be forwarded to DHS for review and appropriate action.

29. Americans With Disabilities Act Of 1990 Requirements

Contractor shall comply with all applicable federal requirements in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (42 USC, Section 12100 et seq.), Title 45, Code of Federal Regulations (CFR), Part 84 and Title 28, CFR, Part 36.

30. Disabled Veteran Business Enterprises (DVBE)

Contractor shall comply with applicable requirements of California law relating to Disabled Veteran Business Enterprises (DVBE) commencing at Section 10115 of the Public Contract Code.

31. Word Usage

Unless the context of this Contract clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," "must," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.